HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.989 of 2006 (MS)

Mahesh Chandra Sharma s/o Sri M.L. Sharma
678/E Biharipur, Bareilly ..... Petitioner

Versus

1. Cane Commissioner cum Registrar, Cooperative Sugar Factory Societies, Uttaranchal, Kashipur
2. General Manager, Bazpur Co-operative Sugar Factory Ltd; Bazpur, District Udham Singh Nagar
3. Collector, Bareilly, State of U.P.
4. Tehsildar Sadak, Bareilly, State of U.P.

..... Respondents

Sri V.K. Bisht, Sr. Advocate assisted by Sri Sushil Vashista for the petitioner
Standing Counsel for the respondents.

Dated: 1.8.2006

Hon'ble Rajesh Tandon, J.

Heard Sri V.K. Bisht, Sr. Advocate assisted by Sri Sushil Vashista counsel for the petitioner and Standing counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the award dated 23.1.2006 passed by the respondent no. 1.

Briefly stated the petitioner was appointed on the post of assistant Ware House Incharge and was posted at Haldwani Warehouse by order of the General Manager dated 30.03.1976. According to the petitioner he fell ill in the year 2002 and mostly remained on medical leave. On 14.02.2003 the opposite

party no.2 required the petitioner to deposit certain amount in the Mill Account, failing which proceedings for recovery for the same will be initiated against him. The petitioner was placed under suspension on 21.3.2003 and enquiry was initiated against the petitioner. Inspite of the fact that disciplinary proceedings were pending at the instance of respondent no. 2, proceedings under section 70 of U.P. Co-operative Societies Act, 1965 before the Cane Commissioner, Kashipur for the recovery of disputed amount were initiated. On 23.1.06 the respondent No. 1 Cane Commissioner ultimately allowed the application of respondent no. 2, and passed an award of Rs. 11,73,971.76 along with interest @ 15% per annum in favour of the opposite party no. 2.The grievance of the petitioner is that he has already attained the age of superannuation but he has not been paid subsistence allowance as well as retrial benefits.

Section 70 of the U.P. Co-operative Societies Act, 1965 reads as under:

70. Disputes which may be referred to arbitration-(1) *Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises-*

(a) *****

(b) ********

(c) *******

(d) *******

such dispute shall be referred to the Registrar for action in accordance with the provisions of this act and the rules and

no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:

Contention of the petitioner is that reference of dispute under section 70 of the Act cannot be availed so far as disciplinary action taken against a paid servant of society is concerned. Thus in view of the bar under section 70 of the U.P. Co-operative Societies Act, 1965 the only remedy remains with the respondents to refer the matter for setting aside the award under section 34 of the Ar4bitration and Conciliation Act, 1996

34. Application for setting aside arbitral award. -

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

(2) An arbitral award may be set aside by the court only if-

(a) The party making the application furnishes proof that

(i) A party was under some incapacity, or

(ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on

matters beyond the scope of the submission to arbitration:

Provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or failing such agreement, was not in accordance with this Part; or

(b) The court finds that-

(i) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) The arbitral award is in conflict with the public policy of India.

***Explanation.**- Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.*

As will appear from sub clause (iii) and sub clause (2) (b) (i) of section 34, that the remedy lies under the Act, to file the application for setting aside the arbitral award, where the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case or there is a bar with regard to subject matter of dispute as contained under section

70 of the U.P. Co-operative Societies Act, in order to exclude the applicability of section 70 of the Act.

In view of the above, petitioner has alternative remedy under section 34 of the arbitration and Conciliation Act, 1996 and thus the writ petition is not maintainable. However, the petitioner may file application under section 34 of the Arbitration and Conciliation Act, 1996 before the Competent Authority and the question of limitation will not come in the way of the petitioner.

Subject to the observations made above, writ petition is dismissed on the ground of alternative remedy.

Dated: 1.8.2006 **Rajesh Tandon, J.**

*Dhyani